



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,931	11/13/2003	Adrian Pfenniger	117203	6566

25944 7590 03/27/2006

OLIFF & BERRIDGE, PLC
P.O. BOX 19928
ALEXANDRIA, VA 22320

EXAMINER

DEVORE, PETER T

ART UNIT	PAPER NUMBER
----------	--------------

3751

DATE MAILED: 03/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/705,931	Applicant(s) PFENNIGER ET AL.	
	Examiner Peter T. deVore	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some * c) ☐ None of:
 - 1. ☐ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites the limitation "the top side" in line 7. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 6, 8, 15, 16, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Ortega.

Regarding claims 1, 15, 16, and 19, the Ortega reference discloses a toothbrush comprising a toothbrush body with a head with bristles 13, neck 12, and handle part/container holder 11, and a toothpaste container with a dispensing head 16" and a container body having a thin-walled and elastic portion 16 and a handle shell portion 14.

Regarding claims 2 and 5, see Fig. 2. Regarding claim 6, the toothbrush further comprises a latching protruberance/latching groove connection between the handle part and toothpaste container (the frictional flange/counterbore arrangement, see col. 1, lines 68-71). Regarding claim 8, the toothbrush further comprises a sealing element/peripheral end surface engagement (the frictional flange/counterbore arrangement, see col. 1, lines 68-71).

Claims 1, 5, 8, 15, 16, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Clark.

Regarding claims 1, 15, and 16, and 19, the Ortega reference discloses a toothbrush comprising a toothbrush body with a head with bristles 28, neck (between the head and handle part, see Fig. 2), and handle part/container holder 12, and a toothpaste container with a dispensing head 24 and a container body having a thin-walled and elastic portion 22 and a handle shell portion 16. Regarding claim 5, see Fig. 1. Regarding claim 8, the toothbrush further comprises a sealing element/peripheral end surface engagement (the engagement between the handle part and the handle shell part, see Figs 1 and 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clark.

The Clark reference discloses a toothbrush as discussed supra, but remains silent as to the viscosity of the toothpaste or size of the opening of the toothpaste container. However, it would have been obvious to have the viscosity of the toothpaste and size of the opening to be in the ranges such that with the container opening downward little to none of the toothpaste passes out of the opening, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 2336.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clark in view of Cope.

The Clark reference discloses a toothbrush as discussed supra, but does not disclose that the container has the same form before and after toothpaste has been squeezed out. However, the Cope reference teaches that is known to make such containers out of plastic such that the container has the same form before and after toothpaste has been squeezed out for low material cost (see col. 3, lines 1-10). It would have been obvious to make the Clark toothpaste container out of plastic such that the container has the same form before and after toothpaste has been squeezed out in view of Cope for low material cost.

Claims 7, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark in view of Jackson.

The Clark reference discloses a toothbrush as discussed supra, but does not disclose a closure pin/centering star/spike on the handle part interacting with the dispensing head. However, the Jackson reference discloses a similar toothbrush having a closure pin/centering star/spike 17 on the handle part interacting with the dispensing head to ensure that the toothpaste container is properly centered and sealed when within the handle part. It would have been obvious to employ a closure pin/centering star/spike on the handle part and interacting with the dispensing head of the Clark toothbrush in view of Jackson to ensure that the toothpaste container is properly centered and sealed when within the handle part.

Claims 11 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark in view of Voigt.

Regarding claim 11, the Clark reference discloses a toothbrush as discussed supra, but does not disclose that the toothpaste container is transparent with a scale. However, Voigt teaches the use of a toothpaste container with a transparent portion 72 and a scale 74 so the user can easily determine how much toothpaste remains. It would have been obvious to modify the toothpaste container of the Clark toothbrush to have a transparent portion and a scale so the user can easily determine how much toothpaste remains. Regarding claim 17, the Clark reference discloses a toothbrush as discussed supra, but does not disclose that the handle part has a window. However, Voigt teaches the use of a handle portion with a window 72 so the user can easily determine how much toothpaste remains. It would have been obvious to modify the

handle part of the Clark toothbrush to have a window so the user can easily determine how much toothpaste remains.

Claims 12 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark in view of Leversby.

The Clark reference discloses a toothbrush as discussed supra, but does not disclose that the handle part has non-slip, flexibly elastic ribs. However, the Leversby reference discloses a similar toothbrush having non-slip, flexibly elastic ribs 11 on the handle part (see col. 2, lines 60-67) for improved gripping. It would have been obvious to modify the handle part of the Clark toothbrush to have non-slip, flexibly elastic ribs in view of Leversby for improved gripping.

Claims 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clark in view of Asher.

The Clark reference discloses a toothbrush as discussed supra, but does not disclose a restraining element partially holding back toothpaste applied to the head. However, the Asher reference discloses a similar toothbrush having a restraining element 20 which partially holds back toothpaste applied to the head for improved plaque removal. It would have been obvious to employ a restraining element which partially holds back toothpaste applied to the head on the Clark toothbrush in view of Asher for improved plaque removal.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter T. deVore whose telephone number is (571) 272-4884. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pd *PJ*

Peter T. deVore